



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

March 31, 2000
AO-00-04

Leslie Bracebridge
Shutesbury Town Clerk
P.O. Box 326
Shutesbury, MA 01072

Re: Statements by local candidates in town funded newsletter

Dear Ms. Bracebridge:

This letter is in response to your March 21, 2000 request for an advisory opinion regarding including statements by local candidates in the town newsletter.

You have stated that the Town of Shutesbury publishes a newsletter funded solely with local tax dollars. Because of the town's small population and its rural nature, you do not have consistent coverage from a local newspaper. To compensate for this, the Town publishes its newsletter *Our Town* on a quarterly basis. The newsletter is mailed to every household in town. Depending on the season, it might include anything from a copy of the Town Meeting Warrant, to the recycling schedule, or information on how to license one's dog. The spring issue comes out the week before the annual Town Meeting and Election.

You receive thanks annually for inclusion of the Town Meeting Warrant in the newsletter. You also receive annual requests for inclusion of candidate information prior to elections. Until now it has been your understanding that it would be a violation of the campaign finance law to include candidate information. You believe, however, that providing candidate information in a neutral manner would be a service to all residents and actually improve the democratic process in the town.

Question

May the Town invite all candidates for contested¹ seats (this year you have three people running for Selectboard) to submit a statement, limited to 75 words in length, with no reference to fundraising, and a photo, for inclusion in the newsletter?

¹ I assume that if a candidate is opposed by a known write-in candidate, the seat being sought by the candidates is "contested." The Town may want to adopt a policy stating that a seat is "contested" for purposes of the newsletter when

Answer

Yes, if the Town complies with the guidelines discussed below.

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979) the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55 in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court held that M.G.L. c. 55 was a comprehensive campaign finance statute which bars such expenditures since it “demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls.” *Id.*, at 186-187. In accordance with the Anderson decision, this office has consistently advised that governmental entities may not use public resources *to support or oppose* political parties, candidates or ballot questions.

Allowing candidates for contested seats the opportunity to have statements printed in the town’s newsletter would be consistent with the limitations specified in Anderson. Because including statements in the newsletter would not involve the use of public resources to support or oppose any candidate, and the opportunity would be made equally available to all candidates for contested seats, the Town may proceed as outlined in your letter.

Candidates may use certain public resources, e.g., a room in town hall may be provided to announce a candidacy, or mailing labels may be provided, if “equal access” to these resources exists. See Anderson, 376 Mass. at 200 and Interpretive Bulletin IB-91-01. Equal access means that the resource must be provided on the same terms and conditions to other candidates. In addition, a public resource may be provided, even if equal access exists, only if the extent of use is minimal and there is a legitimate public purpose for such use, e.g., resources may be used to promote voter participation. To avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements with candidates, even if there is equal access, which require extraordinary or unusual expenditures or the provision of services to candidates. See AO-99-14 and AO-99-15, in which the office stated that providing services such as training on Web site development to candidates requesting links to a City Web site would raise concerns because it would be difficult to monitor such an arrangement to ensure that all candidates are treated equally.

The proposed arrangement, implemented with the guidelines discussed below, would comply with Anderson and the standard described in AO-99-14 and AO-99-15. The statements would be included in a regularly published newsletter and therefore would not appear to involve extraordinary or unusual expenditures by the Town. In addition, the described use of the newsletter would not involve providing services that would be difficult to monitor. Finally, it would ensure that equal access is provided to all candidates for contested seats.

an individual notifies the Clerk in writing that the individual is a write-in candidate for a particular office. In such circumstances, after the write-in candidate has notified the Clerk, the write-in candidate should be given an opportunity, equal to other candidates for contested seats, to place a statement in the newsletter.

Guidelines

The Town should specify that statements provided for inclusion in the newsletter may not exceed a given length and that the Town will not be responsible for proofreading and correcting submissions. In addition, the Town should inform readers that space in the newsletter is available to all candidates for contested seats, that the Town is not endorsing any candidate, and that candidates have provided all information appearing in statements. See AO-99-14 and AO-99-15 (establishing similar guidelines in the context of access to a city web site for posting of information).

The campaign finance law would not prohibit the Town from adopting certain rules regarding the content and printing of the information in the newsletter. See AO-99-02 (stating that a newspaper could offer free space on its Web site with certain editorial restrictions, e.g., a restriction that advertisements in the final week of a campaign could not mention opponents by name). Restrictions would have to be applied equally to all candidates providing statements. In addition, as recognized in your question, candidates may not use the newsletter to solicit political contributions.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director